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FITCHBURG RAILROAD CO.
LEASE TO BOSTON & MAINE RAILROAD



LEASE.

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FITCHBURG RAILROAD COMPANY
UNIVERSITY OF ILLINOIS
TO

BOSTON & MAINE RAILROAD.

JUNE 30, 1900.

THIS INDENTURE made in duplicate this 30th day of June, A. D. 1900, by and between the FITCHBURG RAILROAD COMPANY, a corporation existing under and by virtue of the laws of the Commonwealth of Massachusetts and of the States of Vermont, New Hampshire and New York, party of the first part and hereinafter denominated the Lessor, and the BOSTON & MAINE RAILROAD, a corporation existing under and by virtue of the laws of the Commonwealth of Massachusetts and of the States of Maine and New Hampshire, party of the second part and hereinafter denominated the Lessee,

WITNESSETH that the said parties, each for itself, its successors and assigns and each in consideration of the grants, covenants and engagements herein made by the other, have granted, covenanted and agreed and do hereby grant, covenant and agree each to and with the other and its successors and assigns as follows, to wit:—

I.

The Lessor doth grant, demise, and lease unto the Lessee, its successors and assigns, its railroad and property of every description, including therein its railroad, lands, docks, elevators and wharves wherever situated, its branches, tracks, side tracks, road beds, superstructure, station houses and grounds, depots, viaducts, bridges, piers, shops, buildings, fixtures, engines, cars, barges, rolling stock, machinery, tools, furniture, telegraph and telephone apparatus, equipment, materials and supplies, and all rights, franchises, easements, privileges, and appurtenances thereto belonging, together with the right to receive all tolls, rents, revenues, income and profits of the demised premises; including also therein the right, title and interest of the Lessor in and to any and all railroads operated by it under lease or otherwise so far as the same are assignable or transferable by the Lessor, and in and to any stocks and securities of other railroads or other corporations owned by it, all dividends thereon and its right of voting on said stock, and in and to any bonds, obligations and contracts of or with other railroads, corporations, or individuals, and all income, advantages and benefits to be derived therefrom—a schedule of which stock and bonds is hereto annexed; hereby assigning and transferring unto the Lessee, subject to all legal obligations and encumbrances thereon, all its railroad, railroad property, franchises and assets of every description except as above stated, and excepting cash on hand, outstanding bills, notes and accounts receivable and all sums received thereon, and its corporate seal and books of record to which the Lessee shall have access at all reasonable times; but this grant and assignment is not to take effect until the first day of the term hereof, and the Lessor shall have the right to pay from its cash on hand on the thirtieth day of June next, to its preferred stockholders, a dividend of not exceeding \$2.00 per share on its preferred stock, not including the stock in its treasury.

TO HAVE AND TO HOLD all and singular the demised premises to the Lessee, its successors and assigns for and during the term of ninety-nine years from and after the first day of July, A. D. 1900, the said Lessee keeping and performing the covenants herein contained on its part to be kept and performed and yielding and paying rent for the said premises to the amount and in the manner following, to wit:—

1. The Lessee shall pay all operating expenses of the Lessor and of all railroads of which the Lessee shall come into possession or which it shall operate under and by virtue of this Indenture, including therein as part thereof all repairs and renewals, all expenditures arising out of any contract, obligation, business, negligence, or misfeasance, or however otherwise arising and whether liability for the same now exist or be hereafter created, in any way connected with the ownership, use or operation of the demised premises, or of railroads operated by the Lessee or the Lessor as herein provided; including therein also as part thereof damages to persons or property, insurance, all taxes of every description, federal, state and municipal, upon the Lessor's property, business indebtedness, income, franchises, or capital stock, or said rental, all expenses consequent upon or incidental to the renewal or refunding of the Lessor's indebtedness or that of any road owned, leased, or operated by it, any expenditures hereinafter declared to be operating expenses, all necessary legal expenses of the Lessor, and the organization expenses of the Lessor, for which, in addition to sufficient office accommodations to be furnished by the Lessee, there shall be paid to the Lessor at the end of each successive three months during the term of this lease the sum of Seventeen hundred fifty dollars (\$1750).

2. The Lessee shall pay, as the same become due, the rentals of all railroads of which it shall come into possession or which it shall operate under and by virtue of this Indenture during the continuance of this lease, and of all roads leased to this Lessor according to the terms of the several leases, shall pay the interest on the indebtedness of the Lessor and on the indebtedness of all roads leased or operated by the Lessor which this Lessor is under obligation to pay, a schedule whereof is hereto annexed, and upon such future indebtedness as shall be created for the purposes herein provided, and upon all future indebtedness of any road leased to or operated by the Lessor which the Lessor shall become bound to pay, and to that end shall pay to the Lessor such sums of money at such times as shall enable it to punctually meet the interest on such indebtedness as the same matures.

The Lessor shall assign and deliver to the Lessee all cash on hand at the inception of this lease and all bills, notes and accounts receivable then outstanding, and all moneys received thereon and all such cash on hand shall be used by the Lessee in payment of the Lessor's current unfunded indebtedness of every nature and in discharging its obligations under contracts outstanding at the inception of this lease—any balance of such cash or moneys in excess of the amount required for such purposes to be credited in the Lessor's inventory of property delivered under and to be accounted for at the expiration of the lease, and, if said cash and said moneys shall prove insufficient for the purposes aforesaid, the Lessee may reimburse itself for the deficit by sale of the Lessor's treasury stock.

3. The Lessee, as rental, on the first day of October, 1900, and on the first days of every subsequent January, April, July, and October during the term of this lease shall pay to each holder of the Lessor's preferred stock—exclusive of any in the Lessor's treasury—One dollar and twenty-five cents (\$1.25) for every share held by him, and to each holder of the Lessor's common stock, exclusive of any in the Lessor's treasury—Twenty-five cents (\$.25) for every share held by him, and in case of any failure so to pay, each shareholder shall have his separate right of action against the Lessee for the amount due to him. The right of a shareholder to any quarterly payment and to sue as above provided shall be determined by his holdings on the first day of the month preceding such quarterly rental day as shown by the Lessor's stock records, a certified copy of which shall be furnished to the Lessee by the Lessor's Treasurer at least fifteen days before each quarterly rental day; provided, however, that, if the proper enabling legislation to that end shall

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have been procured, the Lessee upon demand of the Governor and Council will buy the Fifty thousand (50,000) shares of the Lessor's common stock owned by the Commonwealth and pay therefor Five million dollars (\$5,000,000) par value of the Lessee's three (3) per cent. fifty (50) year gold bonds, and upon demand to be made by the several holders thereof within one year from the inception of this lease, will also buy and pay for on the same terms the whole or any part of the Five thousand (5,000) shares of the Lessor's common stock now outstanding in the hands of private owners, all the said shares so purchased to be transferred and delivered to the Lessee as its absolute property and the said bonds issued in payment therefor to be in addition to bonds heretofore or hereafter authorized by charter or general law.

Shares of the Lessor's capital stock owned by or held for the Lessee shall not be voted at any stockholders' meeting during the continuance of this lease.

II.

If from any cause the Lessee can not be put in lawful possession of any railroad or other property, or of any part of such railroad or other property, the transfer of which as part of the leased premises is contemplated by this Indenture, the Lessor shall continue in the possession, operation, and management thereof without interference or direction from the Lessee, shall receive and account to the Lessee from time to time for any income and profits thereof, shall, upon its request, be furnished by the Lessee with the means of operating and managing the same, shall be at all times indemnified by the Lessee against all loss, injury or liability arising out of such operation and management, and shall deliver possession to the Lessee to be held under this Indenture, whenever it shall be practicable so to do.

III.

The Lessee shall assume all traffic balances due from the Lessor to other railroads or transportation companies; shall assume all contracts of the Lessor for equipment, supplies and material and all other contracts and liabilities of the Lessor to and with individuals or corporations express or implied (its contracts with the holders of its indebtedness as scheduled excepted) including all coupons overdue and unpaid, and shall assume and defend all suits against the Lessor arising out of or in any way connected with the past or future use, ownership and operation of the demised premises or any part thereof and pay all judgments obtained therein; shall pay the interest upon any portion of the indebtedness of the Lessor or of its leased or operated lines that shall be renewed or extended during the term of this lease in like manner as upon the same indebtedness before renewal or extension; and, in case the Lessee shall purchase any of the stock and bonds or other securities, or shall take up or purchase and enforce for foreclosure or otherwise any indebtedness of any of the said leased or operated lines which shall not be so renewed or extended, the security so taken up or purchased and all title, benefit or advantage derived from the enforcement thereof, shall enure to the Lessor at the termination of this lease upon its reimbursing to the Lessee, without interest, all sums paid and expenses incurred in so taking up, purchasing, and enforcing the same.

The Lessee will indemnify and protect the Lessor against all claims which may be made against it by stockholders who may not assent to this lease, and it will pay the claims of any such non-assenting stockholders, and the expenses of the proceedings to ascertain the amount thereof; and any stock, interest or property right of a non-assenting stockholder of the Lessor, which may become its property under such proceedings, shall, upon such payment by the Lessee, be transferred to it by the Lessor, to be held and disposed of by the Lessee for its use and benefit.

IV.

The Lessee—in addition to its right to sell treasury stock as and for the purposes mentioned in Section 2 of Article I hereof—shall also have the right, with the consent of the Directors of the Lessor, to sell from time to time either at auction or at private sale, at a price to be agreed upon be-

tween the Directors of the Lessor and Lessee, the whole or any part of such of the preferred or common stock of the Lessor as may be in its treasury at the inception of this lease, for the purpose of purchasing additional rolling stock necessary for the transaction of the freight and passenger business of the Lessor's road or of roads leased to it for making such other permanent improvements upon the Lessor's property as the Directors of the Lessor and Lessee may agree to as being necessary for the transaction of the Lessee's business upon the Lessor's lines.

Permanent improvements upon the Lessor's property not provided for in the preceding paragraph, if made by the Lessee's Directors with the assent of the Directors of the Lessor, or, in case of their disagreement, decided by the Railroad Commissioners of Massachusetts to be necessary and proper, shall be paid for from time to time by the issue and sale in accordance with the statutes of Massachusetts of additional stock or bonds of the Lessor as the Lessee may from time to time request. Stock issued or sold as herein provided after the inception of this lease shall, from the time of such sale or issue, be deemed part of the Lessor's capital stock within the provisions of Article 1, Section 3, hereof, and be entitled to quarterly dividends at the same rate and in the same manner as stock of the Lessor outstanding at the inception of this lease. Bonds issued as herein provided after the inception of this lease shall be scheduled and the interest thereon paid as part of the Lessor's indebtedness under and pursuant to Article III hereof. The indebtedness of said Lessor as scheduled, including the bonds of the Vermont and Massachusetts Railroad Company payable under its lease to the Lessor, shall be renewed by the Lessor, with the aid of the Lessee, as the same matures, and the whole or any portion thereof shall, at the request and under the direction of the Lessee, be refunded at such time or times and at such rate of interest as may be approved by the Lessee. Any benefits from reduced rates of interest consequent upon such renewal or refunding of the indebtedness of the Lessor or of any of its leased or operated lines shall enure to the Lessee. All premiums obtained from the sale of bonds of the Lessor issued hereunder to renew or refund the Lessor's indebtedness shall be expended by the Lessee upon the property of the Lessor for permanent improvements not in the nature of ordinary repairs.

The term of renewal of any indebtedness of the Lessor as herein provided shall not extend beyond the term of this lease without the consent of the Lessor.

V.

The Lessor shall make and execute such lease or other operating contract with any other railroad corporation as the Lessee may request; provided, however, that no such lease or contract, if the Lessor shall so elect, shall by its terms extend beyond the continuance of this lease, and that the obligations and liabilities arising therefrom shall be assumed and sustained exclusively by the Lessee and that the Lessor shall be by the Lessee held harmless from any loss arising therefrom during the continuance of this lease. Any lease or contract of the Lessor for the operation of any other railroad, terminating during the term of this lease, shall be renewed by the Lessor under the direction and with the assent of the Lessee upon the most favorable terms practicable, but said Lessee shall not be bound to assent to the renewal of such lease or contract upon terms more onerous to the Lessee than those now existing unless, by the award of referees appointed as hereinafter provided, such renewal shall be decided to be necessary to the reasonable protection of the interests of the Lessor. Any lease or contract made or renewed in accordance with the provisions of this Article shall be subject to all the provisions of this lease as effectually as if now existing and herein included, and upon the termination of this lease shall be re-assigned to and enure to the benefit of the Lessor; and all branches and extensions of road leased to or controlled by the Lessee, under this lease which shall be constructed, leased or otherwise acquired by the Lessee during the term hereof, shall be conveyed to the Lessor at the expiration or earlier termination of this lease upon its paying to the Lessee the actual cost of the construction or acquirement thereof without interest.

VI.

The Lessor shall from time to time deliver to the Lessee or such person or persons as it may designate all such proper powers of attorney, transfers, and proxies as shall enable the Lessee to vote on shares of the Lessor in other railroads or other corporations, to collect dividends thereon, and to otherwise use the same as contemplated by this Indenture, but said stock shall not be sold or otherwise disposed of by the Lessee nor by the Lessor except with the assent of the Lessee.

VII.

The Lessee shall have the right to make such changes in the passenger or freight stations, tracks and terminal grounds of the Lessor, to establish such new stations and to agree with other corporations for such union stations, to make such separations of grade crossings of railroads owned or leased by the Lessor with other railroads and with highways, and such other changes in the railroad and railroad property of the Lessor, as the safety and accommodation of the public and the convenient and economical transaction of business may in its judgment require; provided, however, that, at the termination of this lease, the Lessor's stations, tracks, terminal grounds, and railroad property shall be returned to it in as good order and repair as the same are now in and so that the same shall be equally well fitted for the independent use and operation of its own railroad and its leased roads by the Lessor; but not so as to change the termini of said Railroad from the cities in which they now are or so as to remove said Railroad from the towns, cities and villages, or any of them, through which the same now runs.

The Lessee shall also have the right to make permanent additions to and improvements upon the demised premises, which shall consist in general of improvements and additions for which bonds or shares of stock are issuable under the laws of the State within which such improvements or additions are made, or which are made in compliance with the decree of any court, tribunal, or officer having jurisdiction in the premises, and which shall include, among others, additional real estate, any increase in track mileage, separations of grade crossings of railroads owned or leased by the Lessor with other railroads and with highways, buildings, structures, and bridges additional to those existing at the inception of this lease, and buildings, structures, and bridges replacing those existing at the inception of this lease so far as the cost of such new buildings, structures and bridges exceeds the cost of restoring such old buildings, structures, and bridges to as good condition as when new.

Real estate of the Lessor not required for railroad uses may from time to time be sold with the assent of the Lessor's Directors. In every such case the proceeds may be invested in other real estate, to be conveyed to the Lessor and become a part of the premises demised hereunder, or, if that course be inconvenient or impracticable, shall be applied to permanent improvements on the demised premises not in the nature of ordinary repairs, or otherwise used as the parties may agree.

VIII.

All permanent additions and permanent improvements, if assented to by the Director of the Lessor or decided by the Railroad Commissioners of Massachusetts to be necessary and proper, or if required to be made by force of any law now or hereafter existing, or by any court, tribunal, or officer having jurisdiction in the premises, shall be paid for by the Lessor so far as it has or can procure the power to do so in the manner provided in Article IV of this lease; otherwise shall be paid for by the Lessor at the termination of this lease in the manner hereinafter provided. The Lessee shall, as often as once in every year, make and furnish to the Lessor a written statement of all permanent additions to and permanent improvements upon the demised premises and of the cost thereof.

IX.

The Lessee shall use and operate the railroad of the Lessor and of any other railroad corporation whose road is operated hereunder in accordance with the charter of the Lessor and of such other corporation, and in accordance with the laws of the United States, of the Commonwealth of Massa-

chusetts and of the States of New York, New Hampshire and Vermont so far as the same are respectively applicable; shall furnish all cars, engines, rolling stock, and equipment of every description required in addition to the like property hereby demised for the due operation of the railroads operated under and by virtue of this lease; shall observe and perform all the provisions of the leases and contracts of the Lessor with railroads leased to or operated by it; shall keep the demised premises reasonably insured and shall apply the proceeds of any insurance to restoring and replacing the property destroyed, or to making permanent improvements not in the nature of ordinary repairs upon the demised premises; shall apply the proceeds of rolling stock, equipment and other personal property herein demised which it may become advisable to sell and which it is hereby authorized to sell at its discretion, so as to substitute therefor similar property of equal value and equally convenient to the use of the Lessor whenever this lease is terminated; shall replace buildings or structures on the demised premises taken down or removed, and which the Lessee is hereby authorized to take down or remove at its discretion, with other buildings, structures, and permanent improvements upon the demised premises of equal value and equally convenient to the use of the Lessor whenever this lease is terminated; shall furnish the Directors of the Lessor, not exceeding fifteen in number, and its Treasurer, with free annual passes over the railroads operated by the Lessee during the continuance of this lease, and shall transport the stockholders of the Lessor over the railroads hereby demised to and from their annual and special meetings free of charge; shall permit the demised premises to be inspected annually by some competent person appointed by the Lessor, who shall report to both Lessor and Lessee the condition of said premises, shall, for the purposes of such inspection, be furnished by the Lessee with free transportation over the railroads operated by the Lessee under this lease, and shall receive a reasonable compensation for his services, to be paid by the Lessee as part of the Lessor's operating expenses; shall make all returns required by law and shall furnish the Lessor with such abstracts of its accounts as shall enable it to make all returns required of the Lessor; shall not assign this lease except as hereinafter provided, nor under-let the whole or any part of the demised premises (except such portions thereof as may not be required by it for railroad uses) without the consent in writing of the Lessor; shall keep the demised premises in the same good order and condition as the same are when received by the Lessee under this lease; shall cause all rolling stock substituted for that herein demised and added thereto to be distinguished by appropriate names, numbers or letters; at the termination of this lease from any cause whatever shall surrender the demised premises and every part thereof, together with all improvements thereon and additions thereto, and together with all branches or extensions built or added by the Lessee during the term hereof (to be ascertained and determined according to the inventory hereinafter provided for) in the like good order and condition in which they are at the inception of this lease or may be put during the term, the amount of money to be accounted for to the Lessor being the balance credited in said inventory as provided in Section 2 of Article 1 hereof, and the amount of materials and supplies to be surrendered or accounted for to be equivalent in value to the amount on hand at the inception of this lease as shown by said inventory; and, subject to the provisions in this Indenture contained, shall retransfer to the Lessor all stocks, bonds and securities transferred by the Lessor under this lease; provided, however, that at the termination of this lease the Lessor shall pay to the Lessee the value without interest of any permanent improvements and additions not already paid for by the Lessor, the said value to be determined, unless agreed upon by the parties, by the Board of Arbitrators provided for in Article XIII of this lease.

X.

The Lessor shall maintain its existence and organization as a corporation and to that end shall comply with all the requisites and forms of law; shall at the expense of the Lessee do all acts and things and execute all legal instruments necessary and proper to put and secure the Lessee in full enjoy-

ment of all the property, rights, franchises, and interests herein demised and to carry into effect the true intent and meaning of this lease; and shall, from time to time, whenever requested, take real estate required for the convenient use of the demised premises, the Lessee to be reimbursed by the Lessor for the cost thereof and for all expenses arising out of such taking in accordance with the provisions of Article VIII hereof.

To further secure the Lessee in the beneficial enjoyment of the property, rights, franchises, and privileges herein demised, the Lessor constitutes the Lessee its attorney irrevocable with full right and power at the Lessee's expense to use the name of the Lessor in all legal proceedings and in all cases needful for obtaining, holding, and enjoying the premises herein demised and for all purposes consistent with the true intent of this instrument, and all acts and proceedings necessary to give validity to this lease in the States of New Hampshire, Vermont and New York shall be forthwith taken by the Lessee in the name of the Lessor, or otherwise, at the sole cost and expense of the Lessee.

XI.

That the property herein demised and to be accounted for at the termination of this lease may be accurately determined, there shall be made as of the day when this lease takes effect a full and particular inventory, description, and appraisal of all estate and property, real and personal, belonging to the Lessor and coming into the possession of the Lessee by virtue of this lease to which, from time to time, shall be added such other estate and property as shall come into the possession of the Lessee by virtue hereof. Such inventory, description, and appraisal, and the additions thereto from time to time, shall be made by two competent persons, one selected by each party; in case of their disagreement they shall refer the matter in difference to some third person whose decision shall be final.

Such inventory, description, and appraisal shall be made in duplicate and an original furnished to each party and shall be evidence of the nature, value, and condition of the property demised at the inception of this lease or at the time of the additions thereto in all cases in which any question of such nature, condition, or value may arise.

XII.

This lease is upon the condition that, if the Lessee shall at any time fail to make to the Lessor as part of the rent herein reserved the payments herein stipulated to be made to the Lessor to enable it to pay the interest on indebtedness as above provided, or shall fail for thirty days to make any quarterly payments of rental as stipulated in Article I, Section 3 hereof, then and in such case the Lessor may at once enter upon the demised premises and upon any part thereof as for the whole, and expel the Lessee and determine the estate hereby granted, and shall thereupon become seized and possessed of the demised premises and of all the premises then in possession of the Lessee or Lessor under this Indenture and of every part thereof in its original right and as if this lease had never been made; and upon the further condition that, if the Lessee shall fail to perform or observe any other of the covenants and agreements in this lease contained, and such failure shall continue for six months after written notice of such failure from the Directors of the Lessor, or if the use or possession of the demised railroads or any of them, or the estate hereby created and vested in the Lessee, shall be taken from the Lessee by legal proceedings of any kind, or be put into the hands of a receiver, or in any manner be taken into the control of any court, then, in any of said events, and notwithstanding any license or waiver of any prior breach of condition, the Lessor shall have the like right to enter and expel the Lessee and revest in itself its former estate in the demised premises and every part thereof; provided, however, that such entry by the Lessor for breach of condition shall in no wise prejudice or impair any remedies to which it might otherwise be entitled for arrears of rent or preceding breach of covenant, or any other rights secured by this lease in case of its termination before the expiration of the term thereof.

XIII.

In case of any disagreement between the parties hereto as to the true intent and meaning of this lease or any part thereof, or as to anything done or to be done under and by virtue of it or growing out of it, the matter in controversy shall be referred by written submission to the arbitration of referees to be chosen in the manner following: One shall be chosen by each of the parties hereto, or, if either shall unreasonably fail or neglect to appoint a referee when requested by the other, the Board of Railroad Commissioners of Massachusetts, after due notice to the party so failing or neglecting, may appoint a referee; the third shall be selected by the two so chosen. The arbitrators shall hear the parties after due notice to each of them and, if either party fail to attend after such notice, may proceed ex parte. The award in writing of said arbitrators or a majority of them being duly notified to the parties shall be final and conclusive upon them.

IN TESTIMONY WHEREOF the said parties, by their respective Presidents thereunto duly authorized, have caused their corporate seals to be hereto affixed and these presents to be executed and the same to be countersigned by their respective Treasurers the day and year before written.

FITCHBURG RAILROAD COMPANY,

By

EDMUND D. CODMAN,

President.

In presence of

A. WETHERELL DRAPER.

A. RYDER.

Countersigned by

DANIEL A. GLEASON,

Treasurer.

BOSTON AND MAINE RAILROAD,

By

LUCIUS TUTTLE,

President.

In presence of

A. WETHERELL DRAPER.

A. RYDER.

Countersigned by

AMOS BLANCHARD,

Treasurer.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK SS., BOSTON, June 30th, 1900, then personally appeared E. D. Codman, President and Daniel A. Gleason, Treasurer of the Fitchburg Railroad Company, and acknowledged the foregoing instrument to be the free act and deed of the said Fitchburg Railroad Company; and Lucius Tuttle, President and Amos Blanchard, Treasurer of the Boston and Maine Railroad, and acknowledged the foregoing instrument to be the free act and deed of the said Boston and Maine Railroad.

Before me,

WILLIAM B. LAWRENCE,

Justice of the Peace

Lithomount
Pamphlet
Binders
Gaylord Bros. Inc.
Makers
Syracuse, N. Y.



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